



Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation	12 VAC35-105
Regulation title	Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, Substance Abuse, the Individual and Family Developmental Disabilities and Support Waiver, and Brain Injury Residential Services
Action title	Purpose of proposed action is to amend current regulations to establish a licensing fee structure
Date this document prepared	December 14, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This action will allow the Department of Behavioral Health and Developmental Services (DBHDS) to establish and collect fees for the licensing services offered by the Department. DBHDS is one of the few state agencies that does not impose fees for its licensing services. The action will assure that sufficient funds are available to assure that DBHDS can continue to provide effective protection of public health and safety afforded by licensure of services.

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Code of Virginia §37.2-410 authorizes the Commissioner to issue/renew licenses for up to 3 years and permits the Board to fix a reasonable fee for each license issued or renewed. Further the section states that all revenues resulting from collection of fees shall be paid into the general fund.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The current economic climate and lack of state general fund revenues have resulted in significant reductions in funding for the Department's licensing activities. Continued reductions will threaten the effective protection of public health and safety afforded by licensure of services. Currently, staffing for DBHDS licensing activities has been reduced to 2005 levels. In 2005, DBHDS licensed 448 providers, 1133 services, and 2850 locations. In 2009, DBHDS licensed 625 providers (40% increase), 1567 services (38% increase), and 4420 locations (55% increase). Additionally there are 257 new provider applications in process as of November 30, 2009.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

A new Chapter numbered 35 would be added to 12 VAC35-105 to establish a fee schedule. Chapter 40 would be modified to require submission of the fee with an application for licensure. Additionally, other sections of 12 VAC35-105 may need to be revised to reflect the establishment of licensing fees.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The Office of the Attorney General has advised that regulatory action is required for DBHDS to impose fee for its licensing services. There is no alternative action that can be undertaken to achieve this action.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable

effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so at the public hearing or via the Regulatory Townhall website , www.townhall.virginia.gov, or by mail, email or fax to Les Saltzberg at (804) 786-1747 or email les.saltzberg@dbhds.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

DBHDS will be using participatory approach in developing the regulatory changes necessary to establish licensing fees and intends to consult with public and private providers, consumers, families, advocacy organizations, and other state agencies during this process.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action will establish fees to assure that DBHDS can effectively license services regulated by 12 VAC35-105 to assure the protection of individuals receiving these services and to promote the accountability of service providers. This regulatory action is not expected to impact families adversely.